

IN THE DISTRICT COURT OF ROCK COUNTY, NEBRASKA

**BANKERS TRUST COMPANY OF
CALIFORNIA, N.A., AS CUSTODIAN
OR TRUSTEE,**

Plaintiff,

vs.

**KIMBERLY M. BEJOT, n/k/a
KIMBERLY BARTAK, et al.,**
Defendants.

Case No. CI02-15

ORDER TO SHOW CAUSE

SUBJECT OF ORDER:

Filing: (1) Notice of Expiration of Automatic Stay filed on December 5, 2002, by plaintiff, and, (2) Motion for Summary Judgment and Default Judgment filed on December 5, 2002, by plaintiff.

HEARING: DATE/TIME:

Friday, December 20, 2002, at 10:00 a.m., or as soon thereafter as the same may be heard.

PLACE:

In chambers at District Courtroom, **Brown** County Courthouse, **Ainsworth**, Nebraska.

ORDER:

1. It appears that the identified filings fails to comply with Unif. Dist. Ct. R. of Prac. 6, and that the court should, on its own motion, strike the said filing for failure to comply therewith pursuant to NEB. REV. STAT. § 25-913 and/or Unif. Dist. Ct. R. of Prac. 3G.

2. The problem with the Notice of Expiration of Automatic Stay is a failure to comply with Unif. Dist. Ct. R. of Prac. 6, which requires a “showing shall be made by *motion*.” (Emphasis added.) NEB. REV. STAT. § 25-908 defines “motion” as an “application for an order addressed to the court or a judge” (See NEB. REV. STAT. § 25-914 for definition of order.) The “notice” filed by the plaintiff does not seek an order of the court making a determination; rather, the notice purports to itself make that determination. Such procedure deprives the other parties of the due process rights of notice and opportunity for hearing on the factual predicates of the plaintiff’s “notice.” While such

matters may not be frequently litigated, due process rights may not be ignored because they are often waived.

3. The problem with the motion for summary judgment and default judgment is that under Rule 6 “no further action will be taken in the case by the court or by the parties until it can be shown to the satisfaction of the court that the automatic stay imposed by 11 U.S.C. § 362 does not apply or that the automatic stay has been terminated, annulled, modified, or conditioned so as to allow the case to proceed.” As discussed above, the required showing *by motion* has not occurred and until such has occurred the rule prohibits further action by the court or the parties.

4. The party that submitted the filing may appear at the time and place for hearing shown above, and show cause that the answer complies with said statute(s) or rule(s) or why the court should not strike the filing for non-compliance therewith.

Signed in chambers at Ainsworth, Nebraska, on December 6, 2002.
DEEMED ENTERED upon filing by the court clerk.

If checked, the Court Clerk shall:



Mail a copy of this order to all counsel of record and to any pro se parties.

Done on _____, 20____ by _____.



Note the decision on the trial docket as: [date of order] Signed “Order to Show Cause” entered for hearing on [date from body of order] at [time from body of order].

Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge